

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re HEAVEN O., a Person Coming
Under the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

PETER O.,

Defendant and Appellant.

F073458

(Fresno Super. Ct. No. 14CEJ300229-2)

OPINION

THE COURT^{*}

APPEAL from orders of the Superior Court of Fresno County. Gary Green,
Commissioner.

Brian C. Bitker, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

-ooOoo-

* Before Levy, Acting P.J., Kane, J., and Peña, J.

Peter O. appealed from the juvenile court's dispositional order denying him reunification services as to his now nine-month-old daughter, Heaven O. After reviewing the juvenile court record, Peter's court-appointed counsel informed this court he could find no arguable issues to raise on Peter's behalf. This court granted Peter leave to personally file a letter setting forth a good cause showing that an arguable issue of reversible error exists. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844 (*Phoenix H.*.)

Peter submitted a letter in which he contends the juvenile court erred in finding he does not qualify as Heaven's presumed father under Family Code section 7611, subdivision (d). He also contends his trial attorney was ineffective for not helping him execute a voluntary declaration of paternity and that the Fresno County Department of Human Services (department) misinformed the juvenile court that there were no services available to him in prison. In addition, he informs this court there are relatives who would like to be considered for placement.

We conclude Peter failed to make a good cause showing that any arguable issue of reversible error arose from the dispositional hearing and dismiss the appeal. (*Phoenix H.*, *supra*, 47 Cal.4th at p. 844.)

PROCEDURAL AND FACTUAL SUMMARY

Peter and A.F. (mother), an unmarried couple, are the biological parents of Heaven. Mother suffers from bipolar disorder and has a history of heroin and cocaine use. At the time of Heaven's birth in November 2015, mother was on methadone maintenance.

Mother identified Peter as Heaven's father and said he was incarcerated for a parole violation. She planned to reside with him after he was released from prison in the next several months. Peter was serving a three-year prison sentence for false imprisonment by violence. He was taken into custody in April 2015 and convicted in October 2015. Mother said he knew she was pregnant but did not know she had given birth.

Social worker Mariana Sanchez offered mother support and monitored her over the next several weeks. In early December 2015, a social worker from the Children's Methadone Clinic told Sanchez that Heaven had missed two appointments and they could not reach mother. Sanchez located mother and Heaven in poor physical condition, living in an unsafe and unsanitary environment. Sanchez took Heaven, shaking and dirty, to the hospital where she was admitted for observation and treatment. She was subsequently placed in foster care.

The department filed a dependency petition on Heaven's behalf, alleging mother's drug abuse placed Heaven at a substantial risk of harm. The department had not yet determined whether Peter signed a voluntary declaration of paternity and/or was identified as Heaven's father on her birth certificate.

The juvenile court ordered Heaven detained and ordered the department to offer mother services and to facilitate paternity testing for Peter.

In January 2016, Peter appeared for the first time in custody at the hearing on jurisdiction and disposition. The juvenile court appointed an attorney for him, adjudged Heaven a dependent child pursuant to the petition and continued the matter to March 22, 2016, for disposition. The court ordered that paternity testing be completed while Peter was in local custody. DNA testing confirmed his biological paternity.

On March 10, 2016, social worker Lucero De La Torre interviewed Peter at the county jail. He said he was in a relationship with mother for two years and started living with her in August 2014. He lived with mother during her pregnancy and considered Heaven his child. He said they were planning on getting married and he provided her financial assistance during her pregnancy and bought baby supplies for Heaven. He denied having a substance abuse problem or history of domestic violence and was willing to participate in any court-ordered services. He also asked for visitation.

De La Torre spoke to a correctional counselor at the state prison who said there were no services available for Peter and indicated that his tentative release date was October 1, 2016.

The department recommended the juvenile court provide mother reunification services and elevate Peter's paternity status to presumed father but deny him reunification services under Welfare and Institutions Code¹ section 361.5, subdivision (e)(1).² The department stated that Heaven was comfortable in her placement and her foster parents were willing to provide an adoptive home.

On March 22, 2016, the juvenile court convened the dispositional hearing. Minor's counsel objected to the department's recommendation to elevate Peter to presumed father status, arguing he did not qualify under Family Code section 7611, subdivision (d) because he did not have a relationship with Heaven and had not held her out as his own child. Peter's attorney argued that Peter had been "adamant" from their first contact that he was Heaven's father. He told his family that Heaven was his child and his sister wanted Heaven placed with her. His attorney explained that she was unable to help him execute a declaration of paternity because mother had not appeared to sign the declaration. She did not have him complete a "Statement Regarding Parentage" (JV-505) because he had never lived with Heaven. She believed his best option under the circumstances was to elevate him to biological father through paternity testing.

Peter told the juvenile court he lived with Heaven in his apartment while she was in mother's "stomach" and that the apartment, the electric bill and the cable were in his

¹ All statutory references are to the Welfare and Institutions Code unless otherwise noted.

² The juvenile court may deny an incarcerated parent reunification services under section 361.5, subdivision (e)(1) if it finds by clear and convincing evidence that providing reunification services would be detrimental to the child.

name. He had a sonogram of Heaven but no pictures of her after she was born because mother had not been in contact with him.

The juvenile court found that Peter did not qualify as Heaven's presumed father because he did not have a relationship with her after she was born. The court ordered Heaven removed from mother's custody, ordered reunification services for mother and set the six-month review hearing for September 2016. The court denied Peter reunification services, including visitation.³

DISCUSSION

An appealed-from judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is appellant's burden to raise claims of reversible error or other defect and present argument and authority on each point made. If appellant fails to do so, the appeal may be dismissed. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.)

Presumed father is an important designation; it accords a man the greatest paternity rights, including custody and reunification services. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 448-449.) Family Code section 7611 sets forth the conditions under which a man may achieve presumed father status. If, as here, he neither legally married nor attempted to legally marry the child's natural mother and did not execute a voluntary declaration of paternity, then he can only achieve presumed father status if he received the child into his home and openly held the child out as his natural child. (Fam. Code, § 7611, subds. (a)-(d).)

Peter's failure to "receive" Heaven into his home is what barred him from qualifying as her presumed father. Peter contends that he *did* receive Heaven into his

³ Section 361.5, subdivision (a) addresses reunification services for a biological father and provides that the court may order reunification services for the child and biological father if the court finds that the services will benefit the child. The juvenile court denied Peter reunification services under this statute, after finding that providing him reunification services would not benefit Heaven.

home because he and mother lived together during mother's pregnancy. Case law is clear, however, on this point. "[T]he birth of a child is an essential prerequisite of each of the five presumptions stated in Family Code section 7611 Under those Family Code provisions, therefore, a man cannot be the presumed father of a fetus." (*People v. Ward* (1998) 62 Cal.App.4th 122, 126; see also *In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1229-1230.) Consequently, the court did not err in finding that Peter did not qualify as a presumed father under the Family Code.

Further, Peter fails to show that his trial attorney was ineffective because he (Peter) did not execute a voluntary declaration of paternity. To be valid, the declaration must be signed by the mother and the father. (Fam. Code, § 7574, subd. (b).) Peter's attorney explained that she was unable to obtain mother's signature because mother did not appear. Peter questions in his letter whether he may execute a declaration even now. To our knowledge, there is nothing that would bar him from doing so.

Finally, whether reunification services were available to Peter in prison was not a relevant consideration in the juvenile court's decision not to elevate him to presumed father status or its determination that services would not benefit Heaven. Further, the willingness of relatives to take custody of Heaven is a placement issue which must be raised in the juvenile court.

We conclude Peter failed to make a good cause showing that an arguable issue of reversible error exists related to the issues before the juvenile court at the dispositional hearing. Consequently, we dismiss the appeal.

DISPOSITION

This appeal is dismissed.